

Submission from Joe Davidson

Hi Gene/Karen, thanks for the opportunity to make a submission. I only have a few comments that you may consider:

1. Under Section B1.2.3, there is the following comment:

For development in areas outside of the identified areas within the Byron Coast Comprehensive Koala Plan of Management that have koala feed trees (Appendix 1) and or koala habitat on or adjacent to their Lot, irrespective of the size of the Lot, the requirements of the Koala Habitat Protection SEPP (2019) apply.

In my opinion, it is not appropriate for a Council Development Control Plan to trigger SEPP provisions, particularly when the SEPP itself states that certain properties are not required to be actioned under the SEPP. The best example in this regard is the 1 hectare trigger within the SEPP, yet the draft DCP provision states "irrespective of the size of the lot". The SEPP is quite clear that development proposals on properties of less than 1 hectare (on sites where no KPOM applies) do not need to consider the Guidelines referred to in the SEPP. Why would the Council DCP want to enact this assessment requirement when the State Policy excludes these sites? It seems to be going beyond the legislative powers of a DCP to trigger SEPP provisions.

2. Under Section B1.2.5, some properties are very large and may have Red Flag or HCV areas mapped at one end of the property, yet a development is proposed at the other end of the property (where it is separated from the Red Flag or VMP areas).

I think in many cases it would be completely excessive to have to engage an Ecological Consultant (which costs landowners significant time and money) to verify that there are no impacts on vegetation. The DCP should provide clarity that in some cases, where it is obvious that no vegetation impacts are occurring, or where vegetation impacts do not actually relate to a Red Flag or HCV area, the proposal can proceed without engaging an Ecological consultant to provide all the information within Appendix 2 of the draft DCP. Perhaps there could be a section to clarify when the engagement of an Ecological Consultant is NOT required. I have multiple examples of Development Applications that would be unnecessarily put through Ecological assessment requirements under Appendix 2 when the development is located well away from HCV and Red Flag areas that are mapped elsewhere on the property. This is an unfair and not a well founded expectation for a landowner to incur additional ecological costs.

3. In relation to Appendix 1, just a suggestion for an ease of use perspective, the 5 pages making up this Appendix could probably be condensed into a 1 or 2 pages.

4. In relation to B1.1.2, I think that the DCP Chapter needs to acknowledge that some vegetation removal works can actually proceed without consent, even if those works are ancillary to a development proposal.

For example, if a Development Application for the construction of a house involves the removal of a camphor laurel tree, there should be an acknowledgement that the removal of that tree, even though it is ancillary to the dwelling proposal, can actually be completed without development consent.

I am concerned that Council staff enter into some kind of extended assessment regime as soon as a DA is submitted. If Chapter B2 of the DCP allows for certain vegetation to be removed without consent, let it go, don't try to bring it into the DA assessment. The owner could lawfully go and remove that vegetation in accordance with Chapter B2 before, during or after the DA is lodged/determined, so why add these items to the DA assessment consideration.

5. In relation to B1.2.1, I don't think that the objectives of this section should be so rigidly enforced. The 'no-net loss policy' and the 'avoid and minimise' strategy need to have context.

There are many examples of where the removal of vegetation is required for a planning purpose (eg. bush fire protection) and where sites have inappropriate plantings. The very reason landowners apply to remove vegetation is because that vegetation is a problem on their property, or it occupies an area that is otherwise suitable for development.

As a consent authority, Council needs to apply a reasonable approach to assessing a development proposal and acknowledge that sometimes vegetation loss will occur. Sure, replacement planting can be carried out where it is appropriate, but there should be flexibility so that replacement planting doesn't reintroduce problem plantings. Further, and more in line with the 'no net loss policy', Council's position should not be to avoid at all costs, if some vegetation has to be removed and it can be appropriately replaced, the DCP should acknowledge that this is an acceptable outcome. It would be great if the DCP offer some acceptable solutions rather than a series of barriers for development.

6. In relation to Table 3, the buffers recommended in this table would be appropriate in some properties, but for others, particularly where existing development is within or close to these buffer distances, there will be times when ancillary development is proposed which should not be expected to comply.

I suggest that the DCP needs to have some flexibility written into it so that assessment staff do not use the document as a rigid tool to refuse development proposals.

To summarise, my biggest concern with the Draft DCP chapter is the fact that there are some overly low threshold triggers for an Ecological Consultant to be engaged. I suggest that this is reconsidered to provide a reasoned and fair threshold for when the considerable expense and time of engaging an ecological consultant is appropriate. Secondly, I don't think a DCP should try and activate the provisions of a SEPP wherein that SEPP actually excludes its activation for certain properties. I don't think this is even lawful?

The other matters I won't repeat. I trust that you know the document better than anyone else and my comments are based on a quick read through. But hopefully there might be something constructive come from them.